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**U.S. Citizenship
and Immigration
Services**

FILE:

WAC 07 252 54335

Office: CALIFORNIA SERVICE CENTER

Date: JAN 06 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Michael Grissom".

for
John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Iraq, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner failed to establish that he and the beneficiary met within the two-year period immediately preceding the filing of the petition, as required under section 214(d) of the Act, or that such a meeting would have constituted an extreme hardship or violated the customs of the beneficiary's culture or social practice. The director also found that the petitioner failed to establish that he was legally able to conclude a marriage at the time of filing when he submitted a divorce decree that was not signed by a judge. *Decision of the Director*, dated January 30, 2008.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

... shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. . . .

It was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on July 30, 2007. On appeal, the petitioner submits his Decree of Dissolution of Marriage which was finalized on July 24, 2007 and signed by a judge in the Court of Common Pleas of Lorain County, Ohio. Thus, on appeal, the petitioner has established that he was legally free to marry at the time of filing the petition.

On appeal, counsel submits a brief and evidence that complying with the two-year meeting requirement would have constituted an extreme hardship and violated the customs of the beneficiary's culture. *Counsel's Brief*, undated. Counsel states that conditions are too dangerous in Iraq for the petitioner to meet the beneficiary there and that because he is an American non-Muslim male it would be dangerous for him to meet the beneficiary in a

country bordering Iraq. Counsel also states that there have been many incidents of violence against Muslim women who associate with non-Muslim males in Iraq and in bordering countries, making it too dangerous for the petitioner and beneficiary to meet.

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from the two-year meeting requirement if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on July 30, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 30, 2005 and ended on July 30, 2007.

At the time of filing, the petitioner indicated that he and the beneficiary had not met in person because he could not travel to Iraq for financial and political reasons; the beneficiary's family is conservative and she is forbidden to meet and become friends with a non-Muslim American male; the beneficiary's family believes in arranged marriages and the beneficiary's father is abusive toward her and other members of her family. *Attachment to Form I-129*, dated July 28, 2007.

In his brief counsel asserts that the director erred in not issuing a Notice of Intent to Deny (NOID) or Request for Further Evidence (RFE) in the petitioner's case. Counsel cites to a memorandum from [REDACTED] Associate Director, Operations, *Requests for Evidence and Notices of Intent to Deny*, dated February 16, 2005. This memorandum states, "when the evidence raises underlying questions regarding eligibility or does not fully establish eligibility, issuance of a RFE or NOID is usually discretionary but strongly recommended." The memorandum does not state that the director should have provided a RFE or NOID, as counsel asserts, but merely strongly recommends that a RFE or NOID be issued in cases similar to the petitioner's case. Nevertheless, the petitioner now has the opportunity to submit further evidence to fully establish his eligibility on appeal.

On appeal, counsel states that travel to Iraq to meet the beneficiary would put both the petitioner and beneficiary in danger. *Counsel's Brief*, undated. Counsel states that the State Department has strongly advised U.S. citizens against travel to Iraq and that American men who have been seen with Iraqi women are often harmed or go

missing. In support of these assertions counsel submits a State Department Travel Warning for Iraq which confirms counsel's assertions about travel to Iraq being extremely dangerous. Counsel also submits an article from the New York Times entitled, "Missing Soldier Said to Be Wed to Iraqi" and dated October 29, 2006. The article reports that an Iraqi-American soldier was kidnapped while visiting his Iraqi bride in Baghdad. Moreover, counsel states that it would be equally difficult for the petitioner and beneficiary to meet outside of Iraq in a neighboring country. *Id.* Counsel states that countries surrounding Iraq are under similar travel advisories and are unsafe for Americans because of hostility toward Americans in the Middle East. *Id.* Counsel submits State Department travel warnings for Syria, Iran and Saudi Arabia and cites to the Worldwide Caution from the State Department in regards to the other countries bordering Iraq. Counsel states that as a member of the U.S. Armed Forces, the petitioner would also be in danger in these neighboring countries. In addition to the potential danger to the petitioner, counsel states that due to societal norms in the beneficiary's country it would be extremely hard for her to travel to meet the Petitioner. Counsel submits an article from the Women's International League for Peace and Freedom (WILPF), which states that for the first time in more than a decade, Iraqi women can legally travel overseas unaccompanied by a non-marriageable male relative such as a father or brother. *WILPF Article*, dated January 6, 2004. The article goes on to state that, despite the lift on the travel ban, many Iraqi women still cannot travel alone because of firm opposition from within their own families. *Id.* The AAO notes that in his attachment to Form I-129F, the petitioner stated that the beneficiary's family is conservative and believes in arranged marriages and would forbid her to marry a non-Muslim man. *Attachment to Form I-129*, dated July 28, 2007. Additional documentation submitted shows that in Iraq marriage of a Muslim woman to a non-Muslim man is legally prohibited. *See Webpage on Marriage of U.S. Citizens in Iraq*, provided by the State Department, Bureau of Consular Affairs, printed on March 21, 2008.

The AAO finds that due to the conditions in Iraq it would be an extreme hardship for the petitioner to travel to Iraq to meet the beneficiary. In addition, the AAO finds that it would violate the customs of the beneficiary's social practice in Iraq for her travel alone to meet the petitioner in a neighboring country. Therefore, the appeal will be sustained.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has now met that burden.

ORDER: The appeal is sustained.